IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5193 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NIRMALABEN WIFE OF VINODBHAI NIRANJAN RANA

Versus

COMMISSIONER OF POLICE

Appearance:

MR SUNIL C PATEL for Petitioner

MR AJ DESAI AGP for Respondent No. 1, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 19/01/2000

ORAL JUDGEMENT

#. Heard Mr.Sunil C. Patel, learned advocate for the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1,2 & 3.

#. The detention order dated 20-4-1999 passed by

respondent No.1 - The Commissioner of Police, Surat against the petitioner in exercise of powers conferred under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-B on running page - 20 interalia indicates that a prohibition case was registered against the petitioner at Surat Prohibition police station (East) vide C.R.No : 273/99 on 27-2-99. That in the said case, the Indian made foreign liquor was seized from the possession of the petitioner / detenu and the said matter is pending for investigation.

#. The grounds further indicate that two witnesses on assurance of anonymity have given information regarding the bootlegging activities of the petitioner vide statements dated 7-3-99 , wherein, they have referred to incidents of dated 4-2-1999 and 15-2-1999 respectively. That on the basis of above stated material, the respondent No.1- The Commissioner of Police, Surat as the detaining authority has come to the conclusion that the petitioner / detenu is bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing her prejudicial activities, detention order is necessary and hence the impugned order is passed.

#. It has been submitted on behalf of the petitioner at bar that the impugned order is bad in law on account of the non application of mind. That while the impugned order is passed, the detaining authority has failed to consider the availability of less drastic remedy like claiming of cancellation of bail though available under Section 437(5) of the CrPC and thereby, the subjective satisfaction reached by the detaining authority has been vitiated and has rendered the impugned order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal

No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, the detaining authority has observed in the grounds of detention that the petitioner being on bail in respect to the registered case of prohibition against him, is likely to indulge into the same activities and thereby, in order to prevent the petitioner from continuing her activities, it is necessary to pass the detention order. The said observation suggests that the detaining authority has failed to consider the less drastic remedy like claiming of cancellation of bail and as such, there is no application of mind while passing the impugned order which has vitiated the subjective satisfaction and has rendered the impugned order bad in law.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 20-4-99 passed by respondent No.1 - The Commissioner of Police, Surat against the petitioner is hereby quashed and set aside. The petitioner - NIRMALABEN WIFE OF VINODBHAI is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 19-1-2000 [A.K.Trivedi, J.]

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